

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

1:11-cr-0627 (NLH)

MEMORANDUM OPINION & ORDER

v.

ELIJAH BURKS,

Defendant.

APPEARANCES:

Elijah Burks
63232-050
FCI-Bennettsville
P.O. Box 52020
Bennettsville, SC 29512

Defendant pro se

HILLMAN, District Judge

WHEREAS, Defendant Elijah Burks pled guilty in this Court to possession of a weapon by a convicted felon, 18 U.S.C. § 922(g)(1), on September 20, 2011, see ECF No. 15; and

WHEREAS, the Court sentenced Defendant to 108 months imprisonment on April 27, 2012, ECF No. 23; and

WHEREAS, on August 5, 2019, Defendant filed a motion to correct, vacate, or set aside his federal sentence under 28 U.S.C. § 2255 based on the Supreme Court's decision in Rehaif v. United States, 139 S. Ct. 2191 (2019). See Burks v. United States, No. 19-16331 (D.N.J. filed Aug. 5, 2019) (ECF No. 1).

The Court ordered an answer in that matter, which was filed on June 25, 2020, see Burks, No. 19-16331 (ECF No. 13); and

WHEREAS, on December 27, 2019, Defendant filed a motion in his criminal case to dismiss the information on the grounds that it failed to allege all of the elements of the offense, namely that "that the petitioner knew he was a previously convicted felon at the time he possessed the firearm, and as a previously convicted felon, the petitioner knew that his status placed him in a relevant group of persons barred from possessing a firearm." ECF No. 27 at 4 (citing Rehaif); and

WHEREAS, in order to conserve judicial resources, the motion in Defendant's criminal case will be denied without prejudice. The Court will address Defendant's Rehaif arguments in his § 2255 proceedings, Civil Action 19-16331,

THEREFORE, IT IS on this 11th day of August, 2020

ORDERED that Defendant's motion to dismiss the information, ECF No. 27, is denied without prejudice. The Court will address Defendant's Rehaif arguments in his § 2255 proceedings, Civil Action 19-16331; and it is finally

ORDERED that the Clerk shall serve a copy of this Order upon Defendant by regular mail.

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.